

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 14 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

HUI CHI; CHUNMING WANG; LU
WANG,

Petitioners,

V.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-73884

Agency Nos. A75-614-833
A75-614-834
A75-614-835

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 6, 2006^{**}
Pasadena, California

Before: HALL, THOMAS, and TALLMAN, Circuit Judges.

Hui Chi petitions for review of a decision of the Board of Immigration
Appeals (“BIA”) reversing the immigration judge’s (“IJ”) grant of asylum and

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

ordering removal. We lack jurisdiction over the petition for review, and transfer it to the district court as a habeas petition.

We have jurisdiction over “final order[s] of removal” under 8 U.S.C. § 1252(a)(1). In *Molina-Camacho*, we held that only an IJ, and not the BIA, can enter a “final order of removal.” 393 F.3d 937, 941-42 (9th Cir. 2004). Here, the IJ granted Chi’s application for asylum. The BIA vacated the grant of asylum and ordered Chi removed. Rather than remand to the IJ for entry of a removal order, the BIA entered that order itself. The BIA acted *ultra vires* in issuing an order of removal in the first instance. *Id.* at 939. Because the BIA did not remand this matter to the IJ to issue a removal order, no valid final order of removal exists, and we therefore lack jurisdiction over this petition for review. *See* 8 U.S.C. § 1252; *Molina-Camacho*, 393 F.3d at 942.

Pursuant to the procedure adopted in *Molina-Camacho*, however, we treat the petition for review as a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and transfer the petition to the United States District Court for the Central District of California. *See* 28 U.S.C. § 1631; *Cazarez-Gutierrez v. Ashcroft*, 382 F.3d 905, 919 (9th Cir. 2004). Upon transfer, the district court should remand to the agency for further proceedings. *See Molina-Camacho*, 393 F.3d at 942 n.4.

PETITION TRANSFERRED.